

AMENDED IN SENATE APRIL 17, 1996

**SENATE BILL**

**No. 1849**

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**Introduced by Senator Kelley**  
(Principal coauthor: Assembly Member Alpert)

February 22, 1996

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An act to amend Section 308 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1849, as amended, Kelley. Crimes: tobacco products: minors: penalty.

Under existing law, every person under the age of 18 years who purchases or receives any tobacco product or any paraphernalia that is designed for use with tobacco products or any controlled substance shall be punished upon conviction by a fine of \$50 or 25 hours of community service work.

This bill instead would ~~require that punishment be~~ *provide that every person under the age of 18 years who purchases, attempts to purchase, receives, or possesses any tobacco product or any such paraphernalia shall be punished upon conviction by a fine of \$75 or 30 hours of community service work.* By *expanding the scope of,* and increasing the penalty for a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 308 of the Penal Code is  
2 amended to read:

3 308. (a) Every person, firm or corporation which  
4 knowingly sells, gives, or in any way furnishes to another  
5 person who is under the age of 18 years any tobacco,  
6 cigarette, or cigarette papers, or any other preparation of  
7 tobacco, or any other instrument or paraphernalia that is  
8 designed for the smoking or ingestion of tobacco,  
9 products prepared from tobacco, or any controlled  
10 substance, is subject to either a criminal action for a  
11 misdemeanor or to a civil action brought by a city  
12 attorney, a county counsel, or a district attorney,  
13 punishable by a fine of two hundred dollars (\$200) for the  
14 first offense, five hundred dollars (\$500) for the second  
15 offense, and one thousand dollars (\$1,000) for the third  
16 offense.

17 Notwithstanding Section 1464 or any other provision of  
18 law, 25 percent of each civil and criminal penalty  
19 collected pursuant to this subdivision shall be paid to the  
20 office of the city attorney, county counsel, or district  
21 attorney, whoever is responsible for bringing the  
22 successful action, and 25 percent of each civil and  
23 criminal penalty collected pursuant to this subdivision  
24 shall be paid to the city or county for the administration  
25 and cost of the community service work component  
26 provided in subdivision (b).

27 Proof that a defendant, or his or her employee or agent,  
28 demanded, was shown, and reasonably relied upon  
29 evidence of majority shall be defense to any action  
30 brought pursuant to this subdivision. Evidence of  
31 majority of a person is a facsimile of or a reasonable  
32 likeness of a document issued by a federal, state, county,  
33 or municipal government, or subdivision or agency

1 thereof, including, but not limited to, a motor vehicle  
2 operator's license, a registration certificate issued under  
3 the Federal Selective Service Act, or an identification  
4 card issued to a member of the armed forces.

5 For purposes of this section, the person liable for selling  
6 or furnishing tobacco products to minors by a tobacco  
7 vending machine shall be the person authorizing the  
8 installation or placement of the tobacco vending machine  
9 upon premises he or she manages or otherwise controls  
10 and under circumstances in which he or she has  
11 knowledge, or should otherwise have grounds for  
12 knowledge, that the tobacco vending machine will be  
13 utilized by minors.

14 (b) Every person under the age of 18 years who  
15 purchases ~~or receives~~, *attempts to purchase, receives, or*  
16 *possesses* any tobacco, cigarette, or cigarette papers, or  
17 any other preparation of tobacco, or any other instrument  
18 or paraphernalia that is designed for the smoking of  
19 tobacco, products prepared from tobacco, or any  
20 controlled substance shall, upon conviction, be punished  
21 by a fine of seventy-five dollars (\$75) or 30 hours of  
22 community service work.

23 (c) Every person, firm or corporation which sells, or  
24 deals in tobacco or any preparation thereof, shall post  
25 conspicuously and keep so posted in his, her, or their place  
26 of business a copy of this act, and any such person failing  
27 to do so shall upon conviction be punished by a fine of ten  
28 dollars (\$10) for the first offense and fifty dollars (\$50) for  
29 each succeeding violation of this provision, or by  
30 imprisonment for not more than 30 days.

31 The Secretary of State is hereby authorized to have  
32 printed sufficient copies of this act to enable him or her  
33 to furnish dealers in tobacco with copies thereof upon  
34 their request for the same.

35 (d) For purposes of determining the liability of  
36 persons, firms, or corporations controlling franchises or  
37 business operations in multiple locations for the second  
38 and subsequent violations of this section, each individual  
39 franchise or business location shall be deemed a separate  
40 entity.

1 (e) It is the Legislature's intent to regulate the subject  
2 matter of this section. As a result, no city, county, or city  
3 and county shall adopt any ordinance or regulation  
4 inconsistent with this section.

5 (f) Notwithstanding any other provision of this  
6 section, the Director of Corrections may sell or supply  
7 tobacco and tobacco products, including cigarettes and  
8 cigarette papers, to any person confined in any institution  
9 or facility under his, her, or its jurisdiction who has  
10 attained the age of 16 years, if the parent or guardian of  
11 the person consents thereto, and may permit smoking by  
12 any such person in any such institution or facility. No  
13 officer or employee of the Department of Corrections  
14 shall be considered to have violated this section by any act  
15 authorized by this subdivision.

16 SEC. 2. No reimbursement is required by this act  
17 pursuant to Section 6 of Article XIII B of the California  
18 Constitution because the only costs that may be incurred  
19 by a local agency or school district will be incurred  
20 because this act creates a new crime or infraction,  
21 eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section  
23 17556 of the Government Code, or changes the definition  
24 of a crime within the meaning of Section 6 of Article  
25 XIII B of the California Constitution.

26 Notwithstanding Section 17580 of the Government  
27 Code, unless otherwise specified, the provisions of this act  
28 shall become operative on the same date that the act  
29 takes effect pursuant to the California Constitution.